

**From:** Burton Cohen  
**To:** Microsoft ATR  
**Date:** 1/27/02 7:01pm  
**Subject:** Microsoft Settlement

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Here are two articles that should help you realize that Microsoft is less than honest (first article) and not being given a harsh penalty for having been convicted of braking the law:

This first article is from the San Jose Mercury News which interviewed the author of the Tunney act:

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Posted at 12:23 a.m. PST Saturday, Jan. 26, 2002

Lobbying act author criticizes Microsoft  
Antitrust disclosure called 'inadequate'

BY KRISTI HEIM  
Mercury News Seattle Bureau

Microsoft's failure to disclose all its contacts with the government directly contradicts the intention of a federal law designed to prevent the influence of lobbying on antitrust settlements, the former California senator who wrote the law said Friday.

John V. Tunney, who wrote the antitrust legislation known as the Tunney Act in 1972 and is now a business executive, called Microsoft's brief disclosure of its lobbying activities ``inadequate'' in an affidavit filed with the Justice Department this week.

The declaration comes at a crucial point in the long-running case as a federal judge is deciding whether a proposed settlement between Microsoft and the federal government is in the public interest.

Tunney has been silent on antitrust matters for years but said in an interview with the Mercury News that he felt compelled to ``set the record straight.''

``I do have some pride in my legislative record and my history of service in the Senate, and I don't like to have my words and my intention being misinterpreted,'' Tunney said in a telephone interview Friday.

The Tunney Act was passed in 1974 after the Nixon administration dropped an antitrust case against telecommunications giant ITT and it was later found that ITT had secretly negotiated to pressure the Justice Department to agree to a settlement.

``The disclosure provisions were designed to help ensure that no defendant can ever achieve through political activities what it cannot obtain through the legal process,'' Tunney stated in his affidavit filed Thursday.  
``Failure to comply with these provisions raises an inference or, at a minimum, an appearance of impropriety.''

In their brief filing two months ago, Microsoft's lawyers followed a narrow interpretation of the law. The company reported to the court only a handful of contacts, those with Justice Department lawyers and two federal mediators.

Tunney said the law was intended to cover contacts with any member of the executive, legislative or judicial branches of government by any company lawyer, lobbyist or executive.

MTC-00027090\_0002

Tunney was asked to provide his interpretation by Jeff Modisett, a partner in law firm Manatt Phelps & Phillips in Los Angeles, where Tunney practiced after leaving the Senate until 1983. The firm's clients include Microsoft rivals Oracle and AOL Time Warner. Tunney said he has no involvement in the case itself and was writing simply as the author of the original legislation.

Microsoft did not report its extensive lobbying of Congress or a White House meeting last summer between its chief executive, Steve Ballmer, and Vice President Dick Cheney.

``We made the full disclosure that was required by the Tunney Act and are looking forward to the court's review of the settlement,'' Microsoft spokesman Jim Desler said Friday. Microsoft used a precedent set in the AT&T antitrust case in deciding only to disclose contacts with the executive branch.

Tunney argues that Congress specifically intended to cover communications by corporate officers, lawyers, lobbyists or ``anyone else acting on behalf of such corporate defendant'' with ``any officer or employee of the United States concerning or relevant to such proposal.''

``If a defendant corporation did not have to disclose any contacts or communications with the government'' until an actual settlement decree is in place, he wrote, ``the very purpose of the disclosure would be defeated.''

The settlement reached in November between Microsoft, the Justice Department and nine states is under review by U.S. District Judge Colleen Kollar-Kotelly. The settlement has been criticized as being riddled with loopholes and ineffective at curbing Microsoft's monopoly practices. A 60-day public comment period regarding the proposed settlement ends Monday. (Comments can be submitted by e-mail to [microsoft.atr@usdoj.gov](mailto:microsoft.atr@usdoj.gov).)

Nine other states, including California, chose not to sign on to the proposed settlement and are pushing for harsher remedies. A hearing in their case is scheduled for March 11.

Tunney is president of JVT Consultants and sits on several executive boards, including that of Foamex, a Linwood, Pa., producer of cushioning for bedding, furniture and other markets.

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The second article is from an Industry pundit who declares that the punishment that was worked out is not a punishment but in fact a victory for Microsoft and a defeat for free enterprise.

It appeared in Industry Week this weekend:

Articles - Publication Date 2.1.2002  
E-Business Commentary -- Gates Skates

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Microsoft walks away with a sore wrist and a slice of Apple's pie.  
By Doug Bartholomew

It was the Slap Heard 'Round the World.

That wimpy "thwack" sound you heard was Microsoft Corp. getting a swift wet one on the wrist from the U.S. Government's rubber noodle out back of the Justice Department woodshed. I mean, that cheeky guy from Seattle with the ego the size of Jupiter and a net worth greater than half the countries on earth will think twice before doing that again!

But, hey, lest you believe Big Redmond got away without being punished,

think again. Microsoft, in exchange for the dismissal of more than 100 private class-action antitrust cases, will have to cough up \$1 billion dollars' worth of its software and services free to the nation's poorest public schools. Alright! Eliot Ness and the G-men to the rescue!

But wait. Now comes Apple Computer CEO Steve Jobs -- sore sport! Jobs cried foul, charging that the so-called "punishment," instead of restricting Microsoft's aggressive activities, actually gives Microsoft the keys to the lucrative educational software business.

Wow. You can see why this deal would give Jobs a burr the size of a grapefruit under his saddle. Except for some high-powered graphic stuff used by a few dozen people who make movies with computers, education is one of Apple's few remaining markets of any size. And no wonder. Just about every cubic gigabyte of corporate computing turf on the globe is taken up by scores of different versions of Microsoft Windows residing on a few hundred million Intel-powered PCs. I mean, the last time Apple had more than a single-digit share of the market, there was a buffalo on the nickel.

Under Uncle Sam's wrist-whipping plan, Microsoft would implant a million rebuilt computers and a million copies of Windows operating-system software in more than 12,500 schools in low-income neighborhoods over the next five years. The company also would be made to donate \$450 million to a private foundation to fund grants, training and technical help for the schools -- the idea being that computers and software are no good without the staff and training to put them to use.

Apple has complained that the problem with the settlement lies not in its intent, but in the way it's set up to encourage the use of Microsoft software. Apple wants to ensure that school administrators are free to pick whatever computers and software they want. Thus, Apple is imploring the Feds to revise their plan and force Microsoft to provide funds, not machines and software. Remember, this is a company sitting on \$35 billion in cash.

It's useful to keep in mind, though, that politics and business have at least one thing in common with sports, and that is, it's never over until it's over. Microsoft may not be off the hook just yet.

No, we're not talking about the Lone Ranger to the rescue. It seems that nine states and the District of Columbia have decided to continue litigation against Microsoft in hopes of swapping out the government's wet noodle for a stiff chunk of hickory with a few nails poking out one end. Consumer groups are up in arms, too. "Consumers in the United States already have lost \$10 (billion) to \$20 billion in overcharges due to the Microsoft monopoly," says Mark Cooper, director of research of the Consumer Federation of America. "We don't want to lose billions more."

Will the Feds listen? Will the Department of Justice toughen up its settlement proposal?

Don't bet on it. When you have a nation that's mired in recession and a stock market that behaves more like an old swayback mare than a bull or a bear, it's time to pull in your horns. Anyone who wonders why the Feds backed off should simply recall the decades-old adage about General Motors and America. It's clear Washington believes that the same holds true for Microsoft today. That's right, for what it's worth, Uncle Sam believes what's good for Microsoft is good for America.

Hey, it could be worse. I mean, Microsoft could have gotten 10 detentions and had to write on the title screen for Windows XP, "I WILL NOT monopolize the software business, I WILL NOT monopolize the software business, I WILL NOT . . ."

Doug Bartholomew is an IW senior technology editor. He is based in San Francisco.

I hope that you will make sure that Microsoft is not allowed to dictate the settlement but rather it will be your judgment that they must pay a heavy penalty for the misdeeds which they have been convicted of.

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